

IN THE SENATE

SENATE BILL NO. 1383

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES, CANALS AND CONDUITS;
AMENDING SECTION 42-1203, IDAHO CODE, TO PROVIDE THAT SPECIFIED DUTIES
RELATING TO DITCHES, CANALS AND CONDUITS REQUIRE REASONABLE CARE ONLY
AND DO NOT IMPOSE STRICT LIABILITY OR ENLARGE LIABILITY OF OWNERS AND
TO PROVIDE THAT OWNERS SHALL NOT BE LIABLE FOR SPECIFIED DAMAGES OR
INJURIES; AND AMENDING SECTION 42-1204, IDAHO CODE, TO PROVIDE THAT
SPECIFIED DUTIES RELATING TO DITCHES, CANALS, WORKS AND AQUEDUCTS RE-
QUIRE REASONABLE CARE ONLY AND DO NOT IMPOSE STRICT LIABILITY OR ENLARGE
LIABILITY OF OWNERS, TO PROVIDE THAT OWNERS AND CONSTRUCTORS SHALL NOT
BE LIABLE FOR SPECIFIED DAMAGES OR INJURIES AND TO PROVIDE THAT SPECI-
FIED LAW SHALL NOT BE CONSTRUED TO IMPAIR ANY DEFENSE THAT AN OWNER OR
CONSTRUCTOR OF A DITCH, CANAL, WORKS OR OTHER AQUEDUCT MAY ASSERT IN A
CIVIL ACTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1203, Idaho Code, be, and the same is hereby
amended to read as follows:

42-1203. MAINTENANCE OF EMBANKMENTS. The owner or owners of any ir-
rigating ditch, canal or conduit shall carefully keep and maintain the em-
bankments thereof in good repair, in order to prevent the water from wast-
ing during the irrigation season, and shall not at any time permit a greater
quantity of water to be turned into said ditch, canal or conduit than the
banks thereof will easily contain or than can be used for beneficial or use-
ful purposes; it being the meaning of this section to prevent the wasting and
useless discharge and running away of water. The duties referenced in this
section, whether statutory or common law, require reasonable care only, and
shall not be construed to impose strict liability or to otherwise enlarge the
liability of the owner or owners of any irrigating ditch, canal or conduit.
The owners or constructors of such ditches, canals, works or other aqueducts
shall not be liable for damage or injury caused by: (1) The diversion or dis-
charge of water into a ditch, canal or conduit by a third party without the
permission of the owner or owners of the ditch, canal or conduit; (2) Any
other act or omission of a third party, other than an employee or agent of the
owner or owners of the ditch, canal or conduit; or (3) An act of God, includ-
ing fire, earthquake, storm or similar natural phenomenon.

SECTION 2. That Section 42-1204, Idaho Code, be, and the same is hereby
amended to read as follows:

42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners or constructors of
ditches, canals, works or other aqueducts, and their successors in interest,
using and employing the same to convey the waters of any stream or spring,

1 whether the said ditches, canals, works or aqueducts be upon the lands owned
2 or claimed by them, or upon other lands, must carefully keep and maintain the
3 same, and the embankments, flumes or other conduits, by which such waters
4 are or may be conducted, in good repair and condition, so as not to damage
5 or in any way injure the property or premises of others. The duties refer-
6 enced in this section, whether statutory or common law, require reasonable
7 care only, and shall not be construed to impose strict liability or to oth-
8 erwise enlarge the liability of the owner or owners of any irrigating ditch,
9 canal, works or other aqueduct. The owners or constructors of such ditches,
10 canals, works or other aqueducts shall not be liable for damage or injury
11 caused by: (1) The diversion or discharge of water into a ditch, canal, works
12 or other aqueduct by a third party without the permission of the owner or own-
13 ers of the ditch, canal, works or other aqueduct; (2) Any other act or omis-
14 sion of a third party, other than an employee or agent of the owner or own-
15 ers of the ditch, canal, works or other aqueduct; or (3) An act of God, in-
16 cluding fire, earthquake, storm or similar natural phenomenon. The provi-
17 sions of this section shall not be construed to impair any defense that an
18 owner or constructor of a ditch, canal, works or other aqueduct may assert in
19 a civil action. The owners or constructors have the right to enter the land
20 across which the right-of-way extends, for the purposes of cleaning, main-
21 taining and repairing the ditch, canal or conduit, and to occupy such width
22 of the land along the banks of the ditch, canal or conduit as is necessary to
23 properly do the work of cleaning, maintaining and repairing the ditch, canal
24 or conduit with personnel and with such equipment as is commonly used, or is
25 reasonably adapted, to that work. The right-of-way also includes the right
26 to deposit on the banks of the ditch or canal the debris and other matter nec-
27 essarily required to be taken from the ditch or canal to properly clean and
28 maintain it, but no greater width of land along the banks of the canal or
29 ditch than is absolutely necessary for such deposits shall be occupied by the
30 removed debris or other matter.